

MARGARET LEE PIRTLE

IBLA 80-712

Decided April 16, 1981

Appeal from the decision of the Montana State Office, Bureau of Land Management, denying reinstatement of oil and gas leases, M 28160-A and M 36568-D.

Affirmed.

1. Oil and Gas Leases: Termination--Oil and Gas Leases: Reinstatement

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

2. Oil and Gas Leases: Termination--Oil and Gas Leases: Reinstatement

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date.

APPEARANCES: Margaret Lee Pirtle, pro se.

## OPINION BY ADMINISTRATIVE JUDGE BURSKI

Margaret Lee Pirtle has appealed the decision of the Montana State Office, Bureau of Land Management (BLM), denying her petition for reinstatement of oil and gas leases, M 28160-A and M 36568-D.

By notice dated May 14, 1980, BLM notified appellant that the two leases had terminated as of May 1, 1980, for failure to pay the annual rentals due as of that date. The notice stated that the rentals were received on May 13, 1980, in an envelope postmarked May 9, 1980. Appellant timely submitted a petition for reinstatement stating that she had written and mailed the check on April 28, 1980, and she did not know why it was not postmarked until May 9, 1980. BLM then allowed appellant additional time to submit evidence as to why the envelope contained a St. Louis, Missouri, postmark when appellant lives in Jerseyville, Illinois, and to get a written statement from the post office explaining the alleged delay in postmark. Appellant submitted a statement from the St. Louis postmaster explaining that mail deposited in Jerseyville, Illinois, is sent uncanceled to St. Louis where it is cancelled unless a specific request for a Jerseyville cancellation is made and that he could not provide a conclusive answer as to why a letter mailed on April 28, 1980, would not be postmarked until May 9, 1980. BLM also called the postmaster for a clarification of his statement and learned that the mailroom is cleaned each day and all machines are dusted to insure that mail is not caught underneath them. By decision dated June 9, 1980, BLM rejected appellant's petition for reinstatement after concluding that the evidence offered was not satisfactory to corroborate appellant's assertion that the mailing occurred at a date earlier than indicated by the postmark.

In her statement of reasons on appeal, appellant states again that she mailed the rental payment in time for BLM to have received it by May 1, 1980, and she should not be penalized for the post office's mishandling of the letter. She also informs us that other items of her mail have been delayed going through the St. Louis post office.

[1] Failure to pay the annual rental for an oil and gas lease on or before the anniversary date of the lease results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). The Secretary of the Interior may reinstate oil and gas leases which have terminated for failure to pay rental timely only where the rental is paid within 20 days and upon proof that such failure was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). In absence of such proof, a petition for reinstatement is properly denied. See, e.g., Alice M. Conte, 46 IBLA 312 (1980); J. R. Oil Corp., 36 IBLA 81 (1978); Lone Star Producing Co., 28 IBLA 132 (1976).

[2] The showing of reasonable diligence necessary for reinstatement ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection,

transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Appellant asserts that she mailed the payments on April 28, 1980. The postmark on the envelope is May 9, 1980, however. The Board has held that the postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than that indicated by the postmark. Daniel Ashley Jinks, 36 IBLA 268 (1978); David R. Smith, 33 IBLA 63, 66 (1977). One type of satisfactory evidence is a statement by a postal official explaining the possibility of a delay in processing mail from a particular location on the day that it is asserted mail was deposited there. The statement by the St. Louis postmaster does not provide any such explanation and thus does not constitute satisfactory corroborating evidence. Since appellant offered no other evidence to show that the payments were mailed on April 28, 1980, BLM was correct in regarding the postmark date as the mailing date. Additionally we can find nothing in the record to support a finding that the failure to timely pay was justifiable within the meaning of the reinstatement provision. See Louis Samuel, 8 IBLA 268, 273-74 (1972).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James L. Burski  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

